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Message Text

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PAGE 01 STATE 157718

21
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---------- 054631
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FM SECSTATE WASHDC
TO AMEMBASSY SINGAPORE

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E.O. 11652:N/A

TAGS: EAIR, XX

SUBJECT: PAA- COMMISSION RATE
REF: STATE 122855

PAA ADVISES THAT EMBASSY MAY NOT HAVE RECEIVED FULL BACKGROUND ON PAA COMMISSION ISSUE. NO ACTION IS REQUIRED BUT EMBASSY MAY TAKE NOTE OF FOLLOWING INFORMATION WHICH DEPT SUPPLIED TO OTHER INTERESTED POSTS:

"1. JOINT US-UK STATEMENT REPORTED REFTEL DOES NOT DIRECT-LY ADDRESS QUESTION WHETHER FOREIGN GOVERNMENTS PROPERLY MAY ATTEMPT TO REGULATE COMMISSION RATES PAID BY AIRLINES TO TRAVEL AGENTS OUTSIDE TERRITORY OF COUNTRY ASSERTING SUCH A RIGHT. DURING TALKS WITH UK, HOWEVER, US STOUTLY MAINTAINED THAT COMMISSION RATES ARE NOT "RATES" WITHIN MEANING OF RATE ARTICLE OF US-UK AIR SERVICES AGREEMENT AND THAT CONSEQUENTLY UK HAD NO RIGHT UNDER THAT AGREEMENT TO ORDER PAN AM TO OFFER CERTAIN COMMISSION RATES. WE AC-KNOWLEDGED THAT UK MIGHT IN FACT HAVE STATUTORY AUTHORITY TO REGULATE COMMISSIONS PAID TO TRAVEL AGENTS IN UK TERRITORY, BUT WE MAINTAINED THAT ANY ATTEMPT TO REVOKE OR LIMIT OPERATING RIGHTS OF US AIRLINE FOR FAILURE TO COMPLY WITH AN ORDER REGULATING COMMISSION RATES PAID TO
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PAGE 02 STATE 157718

TRAVEL AGENTS WOULD DEPRIVE US OF BENEFITS ACCORDED IN

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006

AGREEMENT AND THUS BE A VIOLATION OF THAT AGREEMENT. WHILE UK REPS DID NOT ACCEPT US POSITION, THEY OFFERED NO COMPELLING LEGAL ARGUMENTS TO THE CONTRARY.

2. ON DAY FOLLOWING US-UK TALKS, A JUDGE IN BRITISH COMMERCIAL COURT RULED THAT UK ACTED ULTRA VIRES IN ORDERING PAN AM TO PAY CERTAIN COMMISSION LEVELS (WHETHER SALE IS IN OR OUTSIDE UK). JUDGE SPECIFICALLY RULED THAT RATE ARTICLE IN BILATERAL AIR SERVICES AGREEMENT WAS NOT APPLICABLE.

3.WHILE BRITISH COURT DECISION HAS NO LEGAL STANDING IN OTHER COUNTRIES AND WHILE THERE ARE SLIGHT DIFFERENCES IN RATE ARTICLES IN OTHER BILATERAL AIR TRANSPORT AGREEMENTS, USG IS CONFIDENT THAT ITS VIEW ON THIS QUESTION IS CORRECT.

4. IN VIEW THESE RECENT DEVELOPMENTS, WE DOUBT OTHER COUNTRIES WILL NOW TRY TO EMULATE UK IN THREATENING TAKE ACTION AGAINST PAN AM FOR FAILURE OBSERVE THEIR ORDERS ON COMMISSION RATE QUESTION, AT LEAST IN SO FAR AS SALES IN US OR THIRD COUNTRIES ARE CONCERNED. POSTS SHOULD PROMPTLY REPORT ANY FIRM INDICATION TO CONTRARY." SISCO

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